IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 1228 of 2005

Between:

1. Mrs. Shafa Lika Mishra D/o Umakent Mishra, R/o 8-3,
K.V.Bolarum Allenby Lanes, JJ. Nagar, Yapral, Secunderabad.

2. Robert William Copple S/o MR. John Copple, now R/o at B-3,
K.V. Bolarum, Allenby Lanes, JJ Nagar, Yapral, Secunderabad.

..... PETITIONERS

AND

The Sub-Registrar Cum Marriage Officer, Begumpet, Secunderabad

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or Writ, one more in the nature of a Writ of Mandmaus declaring the reply dated 15-01-2005 of the respondent to the petitioner (filed herewith) refusing to register the marriage between the petitioners, dated 6th December, 2004, as ultra vires, bad in law and invalid, and by way of ancipally relief order the respondent to register the petitioners marriage under Section 15 of Act 43 of 1954 or to solemnize their marriage under Section 4 thereof or pass any other suitable orders.

Counsel for the Petitioners: MR.P.RAM SHAH

Counsel for the Respondent: GP FOR REVENUE

The Court made the following:

ORAL ORDER:

Petitioners, after undergoing the ceremony of marriage on 06-12-2004 at Secunderabad, gave letter of request to the respondent to register their marriage under the Special Marriage Act, 1954 (the Act), and the same was rejected on the ground that there is no provision to register marriages between Indian citizens and non-citizens and since first petitioner only happened to be Indian citizen and the 2nd petitioner is not, being a citizen of U.S.A. Questioning the said order petitioners filed this petition for a direction to the respondent to register their marriage.

2. The contention of the learned counsel for petitioners is that since there is no prohibition under the Act, for registering marriage between an Indian citizen and a non-citizen, refusal of the respondent in registering the marriage of the petitioners is arbitrary and without any jurisdiction. He placed strong reliance on **VATSALA AND ANOTHER VS. SUB-REGISTRAR AND MARRIAGE OFFICER** where a learned single Judge of the Karnataka High Court held that since there is no prohibition either in the Act or Foreign Marriages Act, 1969, for marriage between Indian citizen with a foreign national, a direction to solemnize the marriage between a citizen of India and a foreign national can be given.

3. The contention of the learned Government Pleader is that since the Government issued instructions to all the Registering Officers in a Booklet entitled "Registration of documents, Public Societies, Partnership Firms and Marriages -- FREQUENTLY ASKED QUESTIONS AND ANSWERS" in which question 5 and answer reads-

> "Q.5: Whether a marriage between a citizen of India and any other country can be registered either under the Hindu Marriage Act or the Special Marriage Act?
>
> Ans: No. The above acts are applicable only to the citizens of India."

and so the action of the respondent in refusing to register the marriage between the petitioners on the ground that second respondent is not a citizen of India cannot be said to be erroneous. It is his contention that in any event since an alternative remedy of appeal under Section 17 of the Act is open to the petitioners, this writ petition is not maintainable.

4. Since the Booklet "Frequently Asked Questions & Answers" relied on by the respondent has no statutory force, and are executive instructions issued to the registering officers for their guidance, petitioners can certainly question the act of the respondent in not registering their marriage.

5. Since sub-section (2) of Section 1 of the Act lays down that the Act applies to whole of India except to the State of Jammu and Kashmir and to all citizens of India domiciled in the territories in the State of Jammu and Kashmir and since there is no specific bar in the Act for a person who is not a citizen of India getting married to a citizen of India under the provisions of the Act, in India, I find no grounds for the respondent refusing to register the marriage between the petitioners which took place in India. The facts in this case are identical to the facts in **Vatsala** case (1 supra) where it is clearly held that since Section 4 of the Act, which lays down the conditions relating to solemnization of marriage under the Act, does not specifically lay down that a marriage under the Act cannot be performed between a citizen of India and a person who is not a citizen of India, Registrar of Marriages cannot refuse to register such marriage. Hence, petitioners are entitled to the relief sought.

6. In the facts and circumstances of the case merely because there is an alternative remedy of suit is available to the petitioners, I do not wish to drive them to a Civil Court because a civil suit may not be an effective alternative relief.

7. In the above circumstances, the writ petition is allowed and the respondent shall register the marriage between the petitioners if the conditions for registration of the marriage between them are fulfilled. No costs.

(C.Y.Somayajulu, J.)

Date: 18.02.2005

Cvrk

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

Rule Nisi is made absolute as above. Witnesseth the Hon'ble Sri Devinder Gupta, the Chief Justice on this the eighteenth day of February, 2005.

To

1. The Sub-Registrar Cum Marriage Officer, Begumpet, Secunderabad.

2. The Govt. Pleader for Revenue, High Court Buildings, Hyderabad. (OUT).

3. 2 CD copies.